

Appln. No. 10/705,341  
Amendment  
Reply to Office Action dated November 10, 2003

Docket No. 7202-46

### **REMARKS**

The foregoing amendments and these remarks are in response to the Office Action dated November 7, 2005. This amendment is filed with a Request for Extension of Time and the appropriate fees therefor.

At the time of the Office Action, claims 1-11 were pending. In the Office Action, claims 9 and 10 were rejected under 35 U.S.C. §112, second paragraph. Claims 1 and 9-11 were rejected under 35 U.S.C. §102(e). Claims 2-8 were rejected under 35 U.S.C. §103(a). The rejections are discussed in more detail below.

#### **I. Rejections under 35 U.S.C. §112, second paragraph**

Claims 9 and 10 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, and particularly for using the phrase "and the like". Appropriate corrections to the claims are made herein, and withdrawal of the rejections under §112 is thus respectfully requested.

#### **II. Rejections on Art**

Claims 1 and 9-11 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,376,004 to Kuil et al. ("Kuil"). Claims 2-8 were rejected under 35 U.S.C. §103(a) as being unpatentable over Kuil in view of U.S. Patent No. 6,254,918 to Ammedick-Naumann et al. ("Ammedick-Naumann").

Applicant has amended claim 1 by introducing the features of claim 2 therein. Claim 1 thus now recites that the organoleptically characterizing ingredient of plant origin is comprised between the range of about 50 to 70%, which no longer overlaps the 1-35% range disclosed in the document, as well as reciting that the edible fats are in the range of 10-30%.

Contrary to the position in the Office Action that claim 2 is obvious over Kuil in view of Ammedick-Naumann, Applicant notes that Kuil teaches the preparation of stable concentrates which yield a finished sauce, soup or gravy. The optional flavoring compound in Kuil that may include vegetables or mushrooms is added only in an amount of 4-15%. Ammedick-Naumann teaches the use of a semifluid oil-in-water emulsion for binding the vegetable powder, which must

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also include an ungelatinized starch. The vegetable powder is present in an amount only up to 50%, and preferably only up to 35%. Clearly, both references teach that vegetable powder or chopped vegetables must be added in a limited amount up to at most 50%, and a person of ordinary skill in the art would not arrive at a foodstuff having the limitations of claim 1, with from about 50% to 70% of the vegetal ingredient if the teachings of Kuil and Ammedick-Naumann were combined.

With regard to method claim 11, applicant notes that the method disclosed in Kuil is substantially different to the one of the present application. In Kuil, the method consists in mixing all the ingredients with the exception of oil and starch and heating to 85°C for 3 minutes and subsequently adding the remaining ingredients and homogenizing the mixture.

On the contrary, in the method of the present application, there is a first step of concentrating the characterizing vegetable ingredients to an  $A_w$  of 0.95 or lower by mild heat treatment, and the homogenization of only part of the thus processed vegetable ingredient, followed by the addition of the oil or fat and any other additional ingredients required. Only when all the ingredients have been mixed, are there the pasteurization and pH adjusting steps.

It is thus evident that the methods differ in that the method recited in claim 11 comprises both a mild heat treatment step to concentrate the vegetable ingredients, and a final pasteurization step at the very end of the process. Furthermore, the purpose of the method of the present application is that of providing a sauce base which comprises the vegetable ingredients in both the creamy and particulate form. This is not achieved by the method of Kuil.

Ammedick-Naumann does not relate to a food composition to be used as a sauce base, but rather, to a seasoning and/or coloring, binding foodstuff composition to be used as an acid in making food products. As clearly stated in lines 14-16 of column 1 of Ammedick-Naumann, the problem underlying the disclosure is that of avoiding the settling of the spices or coloring constituents which are not generally soluble in water or in oil. Such a problem is solved by a composition comprising, *inter alia*, vegetable or fruit powders and having an overall  $A_w$  comprised between 0.6 and 0.8. A complex system is created "in which starch granules and oil droplets are present and also free water in the interstitial spaces, the consistency of the product nevertheless remaining sufficiently low and nevertheless no sedimentation of the ungelatinized starch occurring" (lines 30-37, column 2).

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The technical problem underlying the present application is, instead, that of providing a sauce base which is microbially stable at room temperature and having organoleptic characteristics comparable to those of a freshly made sauce. Such a problem is solved by a composition having comparatively low pH and  $A_w$  values, which, in turn, enable the use of a heat treatment on the composition which is milder than that of the conventional counterparts and which thus results in a product having a more authentic flavor. Applicant further notes that the composition of the present application does not require that inclusion of any added emulsifiers and/or thickeners to achieve a more stable emulsion.

It follows that there was no motivation for the skilled person, facing the problem of the present invention, to combine Ammedick-Naumann with the teaching of Kuil.

### III. Conclusion

Applicants have made every effort to present claims which distinguish over the prior art, and it is thus believed that all claims are in condition for allowance. Nevertheless, Applicants invite the Examiner to call the undersigned if it is believed that a telephonic interview would expedite the prosecution of the application to an allowance. In view of the foregoing remarks, Applicants respectfully request reconsideration and prompt allowance of the pending claims.

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Respectfully submitted,



Mark D. Passler  
Registration No. 40,764  
Sarah E. Smith  
Registration No. 50,488  
**AKERMAN SENTERFITT**  
Post Office Box 3188  
West Palm Beach, FL 33402-3188  
Telephone: (561) 653-5000

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